# In the Supreme Court of the United States

OCTOBER TERM, 1966

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No. 290

PRAIRIE BAND OF THE POTTAWATOMIE TRIBE OF INDIANS, ET AL., PETITIONERS

*v.*

STEWART L. UDALL, SECRETARY OF THE INTERIOR, ET AL.

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT*

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## MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

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We respectfully invite the attention of the Court to the following facts which show that the petition was filed out of time:

The judgment of the court of appeals was entered on January 24, 1966 (Pet. App. C). On April 22, 1966, Mr. Justice White extended the time for filing a petition for a writ of certiorari to June 21, 1966 and

on June 22, 1966, Mr. Justice White signed an order further extending the time to June 23, 1966. The petition was RECEIVED on June 23, 1966, but the certified record required by Rule 21 of the Rules of this Court was not filed, and the case not docketed, until June 24, 1966—one hundred and fifty-one days after the court of appeals' judgment.

Rule 22(3) of the Rules of this Court provides that "[a] petition for a writ of certiorari in [civil] cases shall be deemed in time when it and the certified record required by Rule 21 are filed with the clerk within the time prescribed by law." Section 2101(c) of Title 28 of the United States Code provides that "any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days." Since these limits are jurisdictional, the petition should be dismissed as untimely.

Respectfully submitted.

THURGOOD MARSHALL,
*Solicitor General.*

JULY 1966.

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